



CENTER FOR  
FOOD SAFETY

October 3, 2017

National Freedom of Information Officer  
U.S. Environmental Protection Agency (EPA)  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460  
E-mail: [hq.foia@epa.gov](mailto:hq.foia@epa.gov)

**SUBMITTED VIA ONLINE SUBMISSION FORM**

**RE: Freedom of Information Act Request**

To the National Freedom of Information Officer:

The Center for Food Safety (CFS) is a 501(c)(3) nonprofit organization that addresses the impacts of our current industrial food production system on human health, animal welfare, and the environment. Consistent with this mission and pursuant to 40 C.F.R. Part 2 and the Freedom of Information Act, 5 U.S.C. § 552. I, Victoria Yundt, on behalf of CFS, respectfully request the following information:

- 1. The full unpublished 1983 study submitted by Monsanto, Co. to the United States Environmental Protection Agency (EPA) that the Agency relied upon in its 1993 decision on the re-registration eligibility of glyphosate. See U.S. Env'tl. Protection Agency, Glyphosate Reregistration Eligibility Decision app. C-22, -28-29 (Sept. 1, 1993) (citing W. Ridley, M. Dietrich, R. Folk et al., A Study of the Plasma and Bone Marrow Levels of Glyphosate following Intraperitoneal Administration in the Rat: Study No. 830109 (1983) (unpublished study received Nov. 15, 1983 under 524-308; submitted by Monsanto Co., Washington, D.C.; CDL:251737-F) (Master Record Identifier No. (MRID) 00132685)).<sup>1</sup>**

This request is being sent to the EPA FOIA officer with the understanding that it will be forwarded to other officers, offices, or departments with information pertinent to this request.

---

<sup>1</sup> Available at [https://www3.epa.gov/pesticides/chem\\_search/reg\\_actions/reregistration/red\\_PC-417300\\_1-Sep-93.pdf](https://www3.epa.gov/pesticides/chem_search/reg_actions/reregistration/red_PC-417300_1-Sep-93.pdf).

**NATIONAL HEADQUARTERS**  
660 Pennsylvania Avenue, SE, Suite 302  
Washington, D.C. 20003  
T: 202-547-9359 F: 202-547-9429

**CALIFORNIA OFFICE**  
303 Sacramento Street, 2nd Floor  
San Francisco, CA 94111  
T: 415-826-2770 F: 415-826-0507

**PACIFIC NORTHWEST OFFICE**  
917 SW Oak Street, Suite 300  
Portland, OR 97205  
T: 971-271-7372 F: 971-271-7374

**HAWAII OFFICE**  
1132 Bishop Street, Suite 2107  
Honolulu, Hawaii 96813  
T: 808-681-7688

[office@centerforfoodsafety.org](mailto:office@centerforfoodsafety.org)

[centerforfoodsafety.org](http://centerforfoodsafety.org)

## REQUEST FOR FEE-WAIVER

CFS requests that pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), EPA waive all fees in connection with the procurement of this information. As demonstrated below, the nature of this request meets the test for fee waiver as expressed in the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(A)(iii).

The factors EPA must consider in deciding upon a fee waiver request are laid out in 40 C.F.R. § 2.107(l)(2), and those relating to a significant contribution to public understanding of the operations or activities of the government can be summarized as follows:

- (i) Whether the subject matter of the request concerns the operations or activities of the government.
- (ii) Whether the disclosure of the information will likely contribute to an understanding of the subject by the general public.
- (iii) Whether disclosure will contribute to a reasonably broad audience of persons interested in the subject.
- (iv) Whether the contribution to public understanding is significant.

40 C.F.R. § 2.107(l). These factors are to be balanced against one another; no one factor is determinative. *See Friends of the Coast Fork v. U.S. Dep't of Interior*, 110 F.3d 53, 55 (9th Cir. 1997).

The other requirements in the regulations—related to whether the requester has a commercial interest that outweighs a public interest motivation—are not applicable to CFS and this request. Under FOIA, a commercial interest is one that furthers a commercial, trade, or profit interest as those terms are commonly understood. *See, e.g., OMB Fee Guidelines*, 52 Fed. Reg. 10017-18; *see also* 40 C.F.R. § 2.107(b)(1). Such interests are not present in this request. CFS does not seek information from EPA for commercial gain or interest. As a 501(c)(3) nonprofit organization, CFS has no commercial interest in EPA's involvement in the industry-led meeting of April 16, 2014.

In deciding whether the fee waiver criteria is satisfied, CFS respectfully reminds EPA that FOIA is inclined toward disclosure and that the fee waiver amendments were enacted to allow further disclosure to nonprofit, public interest organizations. *See* 132 Cong. Rec. S. 14270-01, (statement of Sen. Leahy) (“[A]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information.”). Furthermore, the Ninth Circuit Court of Appeals has interpreted this fee waiver section broadly, holding that the section “is to be liberally construed in favor of waivers for noncommercial requesters.” *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (citing Sen. Leahy).

**I. The present disclosure is in the public interest because it will significantly contribute to public understanding of the operations or activities of government.**

The requested disclosure will contribute to public understanding of the operations or activities of the government. 5 U.S.C. § 552(a)(4)(A)(iii).

**A. The subject of the disclosure concerns “the operations and activities of the government.”**

EPA is responsible for registering pesticides in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), including evaluating safety data submitted by pesticide registrants and conducting reviews of past pesticide registrations. The requested information pertains to an unpublished 1983 study submitted to the EPA by Monsanto, Co., which assessed the carcinogenicity of the herbicide glyphosate, the main ingredient in Monsanto’s herbicide Round-up. EPA relied heavily on this unpublished study in its last comprehensive assessment of glyphosate in 1993, and concluded based on the industry’s findings that “very little glyphosate reaches bone marrow, that it is rapidly eliminated from bone marrow and that it is even more rapidly eliminated from plasma.”<sup>2</sup> Because EPA is responsible for regulating herbicides, this request regarding information about the Agency’s actions towards the herbicide glyphosate relates to operations and activities of the government. It is irrefutable that EPA’s regulation of pesticides, and specifically its reliance on an unpublished study to determine the carcinogenicity of the herbicide glyphosate, is a clearly identifiable operation of the government. This disclosure will demonstrate to the public at large how the EPA regulates herbicides and determines their effects on human health and in particular the types of scientific studies and data that EPA relies on to determine the carcinogenic risk of herbicides to humans.

**B. The disclosure is likely to contribute public understanding.**

As discussed in the previous section, the present disclosure will provide the public a better understanding of the scientific studies and data that EPA depends on to determine whether the extremely widely used herbicide glyphosate is carcinogenic to humans, as well as how to regulate it. How the EPA analyzes the use and potential harm of herbicides in the fulfillment of its regulatory duties, including its decision to rely on studies and data submitted by interested third parties such as Monsanto, is of importance to increasing government transparency on how the EPA reviews and evaluates the carcinogenicity of herbicides in determining their safety to public health. The requested records, which are not publically available, will meaningfully inform the public about these government operations or activities in a way not currently available in the public domain. *See* 40 C.F.R. § 2.107(l)(2)(ii).

---

<sup>2</sup> U.S. Env’tl. Protection Agency, Glyphosate Reregistration Eligibility Decision, at 18; *see also id.* app. B (citing the requested study as data supporting guideline requirements 84-2B, structure chromosomal aberration, and 84-4, other genotoxic effects, for the reregistration of glyphosate).

**C. The disclosure will contribute to the understanding of a reasonably broad audience of persons interested in the subject.**

This disclosure will contribute to the understanding of a reasonably broad audience of persons interested in glyphosate safety and EPA's risk assessment process. *Id.* § 2.107(l)(2)(iii). CFS is a member-oriented non-profit organization with over 900,000 members that works to address the impacts of the food system on human health, animal welfare, and the environment. Through over a decade of involvement in environmental litigation and policymaking as it relates to food, CFS has demonstrated its ability to take technical information provided by government agencies and distill it into a format that is accessible to the public.

CFS educates and counsels the public—via online action alerts, legal action, our website, our True Food Network, books and reports, and our quarterly newsletter, Food Safety Now!—on the harm done to human health, animal welfare, and the environment by industrial agriculture. Accordingly, CFS is an effective vehicle to disseminate information on pesticides and their impact on human health, animal health, and the environment.

Simultaneously, this FOIA will help CFS fulfill its well established function of public oversight of government action. Public oversight of agency action in particular is a vital component in our democratic system and is the bedrock upon which the FOIA stands. CFS submitted comments to EPA on the registration review of glyphosate. CFS has also made comments to EPA on the potential catastrophic effects of increased 2,4-D use due to new genetically engineered crop approval and the re-registration of the pesticide glyphosate. These comments and critiques are available to CFS members and the general public on CFS's website. CFS has also published a factsheet specifically on glyphosate and its cancer risks.<sup>3</sup> CFS is planning on formulating a factsheet or report specifically on EPA's risk assessment of glyphosate, and the information sought in this FOIA request would aid with that publication, which will be distributed to a general public. CFS is an appropriate vehicle to disseminate information from federal government agencies on the health risks from exposure to glyphosate to their general audience which includes farmers and farmworkers.

Federal courts have found that dissemination to 2,500 people through a newsletter and the intent to start a website is sufficient to meet the "reasonably broad audience" factor. *Forest Guardians v. U.S. Dep't of Interior*, 416 F.3d 1173, 1180 (10th Cir. 2005). Moreover, they have found that the proven ability to digest and disseminate highly technical information, as demonstrated by past analysis and dissemination, merits giving nonprofit organizations fee waivers. *See W. Watersheds Project v. Brown*, 318 F.Supp.2d 1036, 1040 (D. Idaho 2004). CFS's activity in these respects far outstrips any minimums established by judicial interpretation.

---

<sup>3</sup> See Fact Sheet, Center for Food Safety, *Glyphosate and Cancer Risk: Frequently Asked Questions* (May 2015), [https://www.centerforfoodsafety.org/files/glyphosate-faq\\_64013.pdf](https://www.centerforfoodsafety.org/files/glyphosate-faq_64013.pdf).

**D. The disclosure is likely to contribute significantly to public understanding of government operations or activities.**

The disclosure is likely to contribute significantly to public understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure. 40 C.F.R. § 2.107(l)(2)(iv).

CFS employs science and policy experts<sup>4</sup> who have analyzed FOIA, NEPA, and other environmental and scientific reports for their entire careers. CFS puts out reports on pesticides, genetically engineered foods, food and feed additives, and other topics that tend to be difficult for the layperson to understand without professional assistance.<sup>5</sup> To that end, disclosure will result in an enhanced understanding of the subject matter for the public.

**II. Obtaining the information is of no commercial interest to CFS.**

The Center for Food Safety is a 501(c)(3) non-profit environmental advocacy organization that works to address the impacts of our food production system on human health, animal welfare and the environment. CFS works to achieve its goals through grassroots campaigns, public education, media outreach, and litigation. Under FOIA, a commercial interest is one that furthers a commercial, trade, or profit interest as those terms are commonly understood. *See e.g.*, OMB Fee Guidelines, 52 Fed. Reg. 10017-18. Such interests are not present in this request. In no manner does CFS seek information from the EPA for commercial gain or interest. CFS respectfully files this FOIA request pursuant to its goal of educating the general public on the adverse effects of industrial agriculture. Upon request and free of charge, CFS will provide members of the public with relevant information obtained from EPA

Based upon the foregoing, CFS requests that this FOIA be classified within the EPA's fee waiver category and that FDA send the requested information as required by law. As this is a matter of extreme importance to CFS, we look forward to your reply within twenty working days as required by FOIA. 5 U.S.C. § 552(a)(6)(A)(i). If the responsive records are voluminous please contact me to discuss the proper scope of the response. If any exemption from FOIA's disclosure requirement is claimed, please describe in writing the general nature of the document and the particular legal basis upon which the exemption is claimed. Should any document be redacted, please indicate the location of the redaction through the use of black ink. Please provide any and all non-exempt portions of any document which may be partially exempt due to some privilege as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

Please send all materials to the San Francisco address on the letterhead. Please call me at (415) 826-2770 if you have any further questions about this request.

---

<sup>4</sup> *See* Leadership, Center for Food Safety, <http://www.centerforfoodsafety.org/staff> (last visited Oct. 2, 2017).

<sup>5</sup> *See* Publications & Resources, Center for Food Safety, <http://www.centerforfoodsafety.org/reports> (last visited Oct. 2, 2017).

Sincerely,

**/s/ Victoria Yundt**

Victoria Yundt  
Legal Fellow  
Center for Food Safety  
303 Sacramento St, 2nd floor  
San Francisco, CA 94111  
[tyundt@centerforfoodsafety.org](mailto:tyundt@centerforfoodsafety.org)